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MICHAEL J. SULLIVAN
DIRECTOR

January 19, 1995
AO-95-01

Stephen C. Meyers, Treasurer
MA Republican Senate Committee
P.O. Box 180560
Boston, MA 02118

Re: Elected Official or Candidate Serving as Honorary Chair of a PAC

Dear Mr. Meyers:

This letter is in response to your November 23, 1994 letter requesting an advisory opinion regarding the permissibility of an elected official serving as an honorary chairman of a Political Action Committee or PAC.

You have asked three specific questions regarding this issue which I will address in order.

(1) **Candidate as honorary chairman.**

As I understand your first question, you ask if a candidate or elected official may serve as honorary chairman of a PAC if that position exerts no control and has no right to participate in the decisions of the PAC. In addition, you wish to know if such an honorary chairman may be listed on PAC letterhead for the sole purpose of giving the PAC credibility and if the honorary chairman may sign a fundraising letter on behalf of the PAC.

Chapter 43 of the Acts of 1994 ("the Act"), effective January 1, 1995, made significant changes to the campaign finance law. In particular, section 22 of the Act provides as follows:

> No candidate or individual holding elective public office shall establish, finance, maintain, control or serve as a principal officer of a political action committee . . . [See M.G.L. c. 55, s. 5A as added by chapter 43.][1]

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[1] Section 22 exempts from this prohibition the political action committees authorized by a majority of each party's legislators from the House and the Senate.

In the office's opinion, the statutory prohibition applies to any candidate or elected public official who serves as a "principal officer," such as the chairman or treasurer, of a PAC regardless of whether that candidate actually establishes, finances, maintains or controls the PAC. The very fact that a candidate or elected official holds such a position is sufficient to trigger the statutory prohibition.

Your question, however, implicitly raises a more fundamental question: which officers of a PAC are "principal officers?" Since the term is not defined in the statute, we look to the ordinary meaning of the statutory words as well as the statute's purpose.

Standard rules of construction require us to look to the word's ordinary meanings. See M.G.L. c. 4, s. 6. Webster's New Collegiate Dictionary defines the adjective "principal," in part, as "most important, consequential or influential" and the noun "principal" as "a person who . . . is in a leading position." The same dictionary defines the word "officer" as "one who holds an office of trust, authority, or command." Even if an "honorary chairman" were to "exert no control and have no right to participate in the decisions of the PAC," as your question assumes, it is the office's opinion that such a person would, in general, be a "most important, consequential or influential" or be "in a leading position." In addition, such a person would hold a position of "trust, authority or command." In short, such a person would be a "principal officer."[2]

This conclusion is consistent with the purpose of the Act as understood by this office. Since this provision does not include a criminal penalty it does not need to be interpreted narrowly. Rather, it should be interpreted to implement its purpose. Section 22's unmistakable purpose is to separate candidates and elected officials from significant involvement with PACs. Therefore, candidates and elected officials may not serve as principal officers even if the title is officially an honorary or symbolic one.

For the reasons discussed above, it is the opinion of this office that a person serving as the "honorary chairman" of a PAC would, in general, be considered a "principal officer" for purposes of M.G.L. C. 55, s. 5A as amended by section 22 of the Act and, therefore, would not be able to serve in such a capacity or have his name included on a PAC letterhead.

(2) **Candidate signing PAC fundraising letter.**

In your second question you ask if section 22 prohibits a candidate or elected official from signing a fundraising letter

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[2] As the subsidiary parts of your question imply, the fundamental purpose of elevating a candidate or elected official to the position of "honorary chairman" is to give the PAC credibility or increase its fundraising ability by adding the chairman's name to the PAC's letterhead or having the honorary chairman sign a fundraising letter. Actions which, we conclude, probably would constitute financing within the meaning of the Act, as noted below.

on behalf of a PAC. You note by way of example that, in the past, candidates and elected officials such as the governor would sign a single fundraising letter to assist a PAC in raising money. For the purpose of this question, I assume that the candidate or elected official is not serving as a chairman, treasurer, honorary chairman or other principal officer of the PAC.

The answer to this question lies in the meaning of the word "finance" since a candidate or elected officer may not "finance" a PAC. As with the words "principal officer" the statute does not define the word "finance." "Finance" means "to raise or provide funds or capital for." See Webster's New Collegiate Dictionary. The statute provides no specific percentages or other indicia to determine exactly when a candidate or elected official is "financing" a PAC.

In the office's opinion, a candidate or elected official would be considered to be financing a PAC when such a person takes significant action such as agreeing to lend his or her name to a fundraising appeal letter and that action (1) is designed to raise a significant portion of a PAC's funds; (2) actually raises a significant portion of a PAC's funds; or (3) significantly influences the manner in which a PAC obtains contributions.[3]

(3) **Candidate making a contribution to PAC.**

In your third question you ask if the word "finance" includes the making of a contribution. You ask, for example, if an elected official finances a PAC when the official makes a $500 contribution and the PAC receives, in total, only $600 in contributions.

By statute, an elected official or a candidate may contribute up to $500 to a PAC. See M.G.L. c. 55, s. 7A(a)(3). A decision to contribute to a PAC, subject to the contribution limits imposed by law, can not ordinarily be viewed as "financing" a PAC. In addition, it is not the taking of a significant action nor an action designed to raise a substantial portion of a PAC's funds or to influence significantly the manner in which a PAC obtains contributions. However, in your example, if a PAC only needed to raise $600 to achieve its goal and asked a candidate or elected official to make a $500 contribution, then we would conclude that the candidate was "financing" the PAC within the meaning of section 22 of the Act.

For the above reasons, it is this office's opinion that the making of a contribution by a candidate or elected official to a PAC does not, absent unusual circumstances, constitute the financing of a PAC within the meaning of M.G.L. c. 55, s. 5A as added by the Act.

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[3] This conclusion is consistent with existing regulations. See 970 CMR 1.06 which regulates political committees established, financed, maintained, or controlled by a single person. In particular, 970 CMR 1.06(b)4., implicitly defines the word "financing" as the raising of "a substantial portion of the [PAC's] funds."

This opinion has been rendered solely on the basis of representations made in your letter and the assumptions set forth in this letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

Michael J. Sullivan
Director

MJS/cp